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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,110	07/24/2001	Tadashi Iura	010200	5116

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EXAMINER

FITZGERALD, JOHN P

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/786,110

Applicant(s)

IURA ET AL.

Examiner

John P Fitzgerald

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 6-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Figures 1-16 and corresponding claims 1-5 is acknowledged. Claims 6-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Drawing Objections

2. The drawings are objected to because they have Japanese symbols associated with the figure numbers. The figures must be clearly labeled "Fig. 1, Fig. 2, etc.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: axial groove 42a is not shown in any of the Figures.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification Objections

4. The disclosure is objected to because of the following informalities: numerous occurrences of plural terms followed by non-plural terms referring to various elements of the invention. For example, page 12, lines 2-10, states "brackets 33 and 34.." and subsequently states "bracket 33 and 34." Appropriate correction is required.

Claim Objections

5. Claims 1-5 are objected to because of the following informalities: missing parentheses around all numeral references. Appropriate correction is required.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. § 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claim 1 is rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Namely, the claimed invention encompasses a human being, specifically “a patient’s knees.”

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1 and 4 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites “wherein arms 31 are eccentrically rotated in accordance with the rotation of shafts 36 axially extending in front of the patients knees,...” It is unclear from the specification or the claim as to what constitutes an “eccentric” rotation of the arms 31 in accordance with the rotation of shafts 36. Furthermore, specifying the “axial extension” of the “shafts” in relation to a “patient’s knees” is an un-based comparison. Patients

Art Unit: 3637

can vary in size and shape, thus rendering the claim indefinite. As to claim 4, due to the absence of the "axial groove 42a" from the figures, it is unclear the proper interactive relationship between the associated recited elements. In addition, it is unclear from the specification and figures as to the location of the "axis of each arm." The "axis" is not defined by the specification, nor indicated in the figures. Furthermore, claim 4 recites the limitation "the base portion" in line 5. There is insufficient antecedent basis for this limitation in the claim. Furthermore, it is unclear what constitutes the "base portion" of the arms.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. As best understood, claims 1 and 2 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Aubert and Farmer. Aubert discloses a supportive device (10) (Figs. 1-9) for helping physically handicapped patients shift from one structure to another comprising a chassis (12) having an open rear end, provided with a pair of front wheels (46, 48) and a pair of rear wheels (52, 54), a pillar (14) erected on the chassis, a pair of arms (72) provided in the pillar, a pair of thigh supports (78, 80) provided in the arms, a handrail (20, 22) whose rear is open, a lifting device (28, 42, 44) for raising and lowering the thigh supports, wherein the arms are eccentrically rotated (Figs. 8a-8c) in accordance with the rotation of shafts (82) axially extending in front of the patient's knees, in the course of the rotation of the arms the thigh supports being

Art Unit: 3637

inserted under the patients thighs. Aubert does not expressly disclose a supportive device further including a back upholstery, and wherein the thigh supports are capable of inclining. Farmer teaches a supportive device (Fig. 1) having a chassis (10) and a pair of arms (22); a thigh support (29) capable of inclining (Farmer: col. 5, lines 8-14) and a back upholstery (B). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a back upholstery and inclining thigh supports, as taught by Farmer, modifying the supportive device disclosed by Aubert, thus providing back support for the patient during movement of the patient as well as controlled vertical movement of the patient.

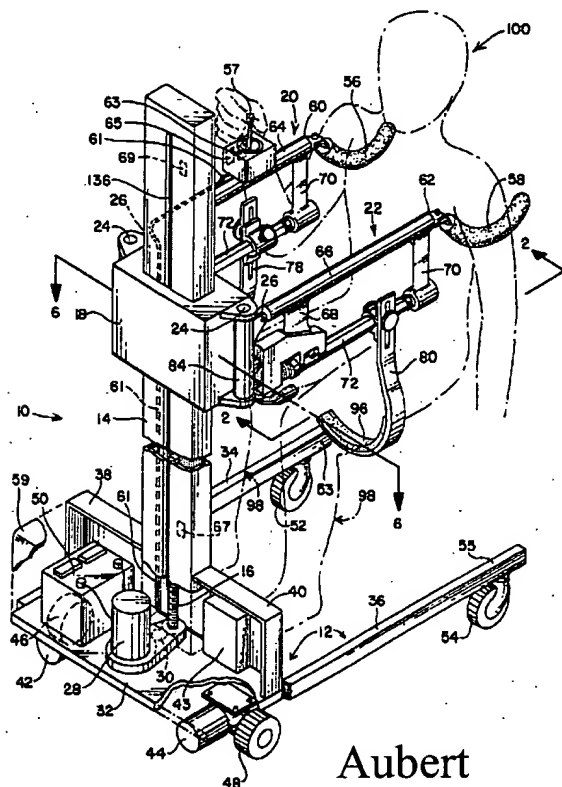
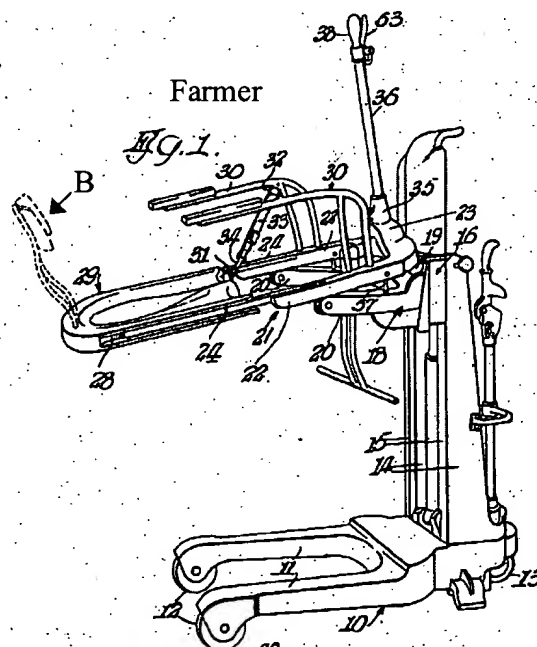


FIG. 1

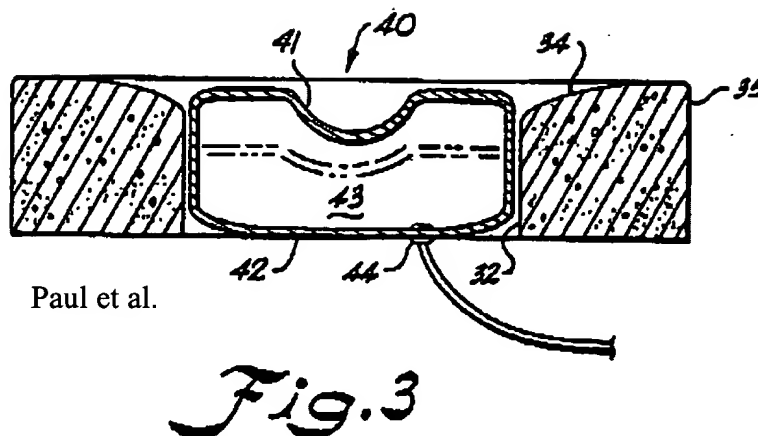


12. Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Aubert and Farmer as applied to claims 1 and 2 above, and further in view of Ramsey. Aubert and Farmer

Art Unit: 3637

disclose a supportive device having all of the elements stated previously. Aubert and Farmer do not expressly disclose a supportive device further comprising a displacing device provided in the arms whereby the thigh supports are spaced at an adequate interval in accordance with the patient's size. Ramsey teaches a support device (Figs. 1-22) having a displacing device (Fig. 3) (31, 32, 33) provided in the arms (25) whereby the thigh supports (29) are spaced at an adequate interval in accordance with the patient's size. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a displacing device provided in the arms of the supportive device disclosed by Aubert and Farmer, as taught by Ramsey, thus providing horizontal movement of the arms and thigh supports to place the patient securely in the supportive device (Ramsey: col. 3, lines 13-64).

13. Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Aubert and Farmer as applied to claims 1 and 2 above, and further in view of Paul et al. Aubert and Farmer disclose a supportive device having all of the elements stated previously. Aubert and Farmer do not expressly disclose a supportive device further comprising a bag containing gas or liquid placed behind the thigh supports, the bag being elastically expanded behind the thigh supports when the lowering thigh supports come in contact with a target structure such as a bed. Paul et al. teach a supportive device (10) (Figs. 1-4) wherein the thigh support (18) comprises a bag (42) that is elastically expanded and filled with a gas via a compressor (52) (Paul et al.: col. 4, lines 22-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a bag containing gas or liquid behind the thigh supports of the supportive device disclosed by Aubert and Farmer, as taught by Paul et al., thus improving the patient's overall comfort (Paul et al.: col. 1, lines 13-16).



Allowable Subject Matter

14. Claim 4 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Burke teaches a elastic bag filled with gas beneath a thigh support; James teaches a supportive device having a back support upholstery; Johansson teaches a supportive device having a thigh support and upper support arms and an open ended chassis; and GB 2289259 to Dunn et al. teaches an actuating device for arms of a supportive device.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Fitzgerald whose telephone number is (703) 305-4851. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai, can be reached on (703) 308-2486. The fax phone numbers for the organization where this

Art Unit: 3637

application or proceeding is assigned are (703)-872-9302 before final action, and (703) 872-9327 after final action. Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1113.



JF

07/23/2003

LANNA MAI
SUPERVISORY PATENT EXAMINER
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